IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.1975 OF 2006

M/s.Cambata Aviation Pvt. Ltd. ...Petitioner.

Versus

M.D. Shirose & Ors. ...Respondents.

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Mr. K. S. Bapat i/b. Mr. J.R. Desai for the Petitioner.
Mr. R. M. Joshi for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

August 17, 2006.

ORAL JUDGMENT:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Petitioner carries on ground handling operations at Sahar International Airport and provides services to several International Airlines including Cathay Pacific, KLM, British Airways, Swiss Air and Gulfair. The First Respondent was employed as a

driver at the International Airport. The allegation of misconduct against the First Respondent was founded on an incident that took place on the night of 24th April 1995 when the First Respondent was on duty. S.Fernandes who was the Coordinating Officer was on duty in the CAPL Parking Area, saw the First Respondent carrying a suit case towards a KLM Cargo Truck upon which the Coordinating Officer rushed towards him and questioned the workman. Since the explanation tendered by the First Respondent was not found to be satisfactory, he was taken to the watchman's cabin. The matter was reported to the Assistant Manager, Traffic and then to the Police. The suit case was found to belong to a passenger who had arrived on Cathay Pacific Flight CX 750. The First Respondent was charged for misconduct involving theft, fraud and dishonesty in connection with the employer's business or property and the commission of an act subversive of discipline.

3. A disciplinary enquiry was convened. During the course of the disciplinary proceedings Mr.Sebastian Fernandes, the Coordinating Officer of the Department was examined. The First

Respondent deposed in defence. The Enquiry Officer came to the conclusion that the misconduct was proved. The First Respondent was dismissed from service.

4. A reference was made under Section 10 of the Industrial Disputes Act, 1947. The Labour Court by an award dated 24th May 2004 held that while the enquiry was fair and proper, the findings were perverse and were not based on legal evidence. The order of the Labour Court was challenged in a Petition under Article 226 of the Constitution by the Petitioner. By an order dated 23rd February 2005, this Court came to the conclusion that the finding of the Labour Court to the effect that the conclusions of the Enquiring Officer were perverse, suffered from a clear and patent perversity and was liable to be corrected in the exercise of the writ jurisdiction. This Court adverted to the evidence of Mr.Sebastian Fernandes who was the Coordinating Officer and who had deposed to the circumstances relating to the incident. This Court noted that in the course of the cross-examination, there was not even a suggestion to the effect that the incident had not taken place or that the workman had not been

apprehended at the scene of the incident. The Court held that “the evidence of the management's witness showed that he was on duty at the relevant time on 24th April 1995; that the nature of his duties required him to supervise, flights and functions of all areas including the parking area, flights and ramp area; that when he reached the parking area at about 10.10 p.m., he found a person carrying a suitcase in his hand throwing the suitcase in the truck and that the aforesaid person was the First Respondent who was immediately apprehended.” This Court recorded that the First Respondent had in his deposition specifically admitted his presence with a suit case belonging to a passenger when he was apprehended by Mr. Fernandes. The defence of the First Respondent was that he had been asked by another driver to be present at a particular point and that he had been instructed that he would be informed of the reason why he had been asked to remain present subsequently. However, in his deposition the workman stated that when he was apprehended by the Coordinating Officer, he did not furnish the name of the driver, nor did he inform the Police the name of the driver. In the course of the cross-examination, he had admitted that his statement Exh.8 was

written voluntarily and without any pressure and/or undue influence. The workman admitted that the place from where the suitcase was confiscated from him was not a place where regular baggage handling work was carried out. Moreover, he admitted that he had no reason to be present at the spot where he was apprehended by the Coordinating Officer. This Court held that despite cogent and clear evidence on the record, the Labour Court erroneously came to the conclusion that the findings of the Enquiry Officer suffered from perversity. In the circumstances, the judgment of the Labour Court was held to suffer from perversity which was liable to lead to a miscarriage of justice unless corrected at that stage.

5. In these circumstances, the petition filed by the management was allowed and the order of the Labour Court dated 24th April 2005 was quashed and set aside. The proceedings were remitted back to the Labour Court for deciding as to whether the punishment awarded was disproportionate to the charge of misconduct.

6. Parties thereupon appeared before the Labour Court and adduced evidence on the question of misconduct. The Labour Court by its judgment and order dated 20th January 2006 interfered with the punishment that was awarded by the management and awarded reinstatement to the First Respondent with continuity of service but without back wages. The Labour Court held that the allegation of misconduct was based on suspicion; that it would appear that another person was also involved but against whom no proceedings had been initiated and that the First Respondent was acquitted by the Metropolitan Magistrate in the Criminal case on 24th April 2003. The Labour Court was of the view that while the First Respondent ought not to have thrown the bag of the passenger into a truck and his intention may have been of committing theft, since he has been acquitted by the Metropolitan Magistrate, he ought to be given the benefit of this circumstance. The Labour Court was of the view that the workman would take “a lesson in future” not to commit a similar type of misconduct. However, considering the gravity and seriousness of the misconduct, the Court held that a denial of back wages would meet the ends of justice.

7. Counsel submitted that the order of the Labour Court was manifestly in breach of the directions that were issued by this Court in the earlier judgment and order dated 23rd February 2005. This Court had come to the conclusion that the finding of misconduct was duly established and did not suffer from perversity, and it was urged that while going into the question as to whether the punishment was disproportionate, the Labour Court was not entitled to reappreciate the evidence which had already been considered in the judgment of this Court. Moreover, it was submitted that the order of acquittal by the Metropolitan Magistrate was on a technicality and would not in any event foreclose the disciplinary authority from arriving at an appropriate conclusion on the basis of the evidence that was adduced in the enquiry. Finally, Counsel submitted that the reasons that have weighed with the Labour Court are entirely specious: Merely because the First Respondent had named another employee that was no ground for the management to proceed against that employee unless there was reason to believe that the other employee was also guilty of misconduct. In any event it was urged that this cannot absolve the

First Respondent.

8. Counsel appearing on behalf of the First Respondent relied upon the order of acquittal dated 23rd April 2003 passed by the Metropolitan Magistrate, Counsel submitted that the evidence that had come on the record would show that this was the first act of misconduct and that the past record was otherwise not tainted. In these circumstances, it was submitted that the order of the Labour Court is correct.

9. The narration of facts in the earlier part of the judgment would demonstrate that against a finding of the Labour Court that the conclusion arrived at by the Enquiring Officer suffered from perversity, the management had moved this Court in an earlier proceeding. On 23rd February 2005, this Court recorded a finding that the finding of misconduct which was arrived at in the disciplinary enquiry was borne out by the evidence on the record. This Court has adverted to the material that was placed on the record in the disciplinary enquiry. The order of the Labour Court holding that there was a perversity in

the findings arrived at in the disciplinary proceedings was quashed and set aside and the matter was sent back to the Labour Court for determining the question whether the punishment was proportionate. The judgment of this Court concluded that the misconduct was duly proved in the disciplinary enquiry and did not suffer from any perversity. The Labour Court, despite the earlier judgment of this Court, proceeded to hold that the allegation of misconduct was founded on mere suspicion. Every one of the reasons that weighed with the Labour Court is, with respect, specious. The Labour Court relied upon the circumstance that the Respondent was acquitted in the criminal case by the Metropolitan Magistrate. Now, a perusal of the judgment of the Metropolitan Magistrate dated 25th April 2003, a copy of which has been placed on the record by Counsel appearing on behalf of the First Respondent, would show that the acquittal rested on the circumstance that the panch witnesses relating to the seizure of the bag of the passenger were not available on the addresses that were given; that the passenger whose bag was attempted to be stolen was a non-resident who could not be contacted; the bag was returned back to the manager and was

disposed of before the conclusion of the trial; and that the material on record did not reveal that the accused was guilty of the offence with which he was charged. The Metropolitan Magistrate also observed that it appears that the case rested on suspicion. Now, it is a well settled principle of law that the principles which govern a disciplinary enquiry are not the same as those that govern a criminal trial. Criminal proceedings are adopted and pursued by the State in order to punish an accused for breach of the penal law of the land. A disciplinary enquiry, on the other hand, is a proceeding by the employer to punish an employee for breach of the service rules and regulations. A disciplinary proceeding is not governed by strict rules of evidence or procedure which govern a criminal trial. In a criminal trial, the charge has to be proved beyond reasonable doubt. On the other hand in a disciplinary enquiry the charge of misconduct has to be proved on a preponderance of probabilities. Therefore, the acquittal of the accused in a criminal case cannot conclude the question as to whether a misconduct has been established under the service rules and regulations. The Labour Court in these circumstances was not justified in interfering with the punishment on

the ground that the First Respondent was acquitted by the Metropolitan Magistrate. That apart, the judgment of the Metropolitan Magistrate would show that the acquittal is based on technicalities to which a reference has already been made in the earlier part of this judgment.

10. The second reason which weighed with the Labour Court is equally erroneous. The Labour Court held that another employee was involved in the incident, but the management has not proceeded against him. This aspect of the matter was, in fact, considered in the earlier judgment of this Court dated 23rd February 2005. The Court noted that when the First Respondent was apprehended by the Coordinating Officer, he did not furnish the name of the other employee, nor for that matter did he inform the Police of the name of the driver who was alleged to be involved in the incident. There is merit in the submission of Counsel appearing on behalf of the Petitioner that it was for the Petitioner to determine as to whether any other employee was, in fact, involved in an act of wrong doing and unless there was material to proceed against the other employee, the

management could not proceed against him merely because the First Respondent chose to name him at a subsequent stage. It was for the management to consider whether there was material available against the other employee who was named by the First Respondent. Unless there is sufficient material to proceed against that employee, the management was justified in taking a decision that it was the First Respondent who was responsible. In any event, the fact that some other employee may have been involved, would not absolve the First Respondent of the charge of misconduct. No question of discrimination is hence involved. The Labour Court has noted that it was not proper for the First Respondent to have thrown a bag belonging to a passenger into a truck where the bag ought not have been placed. The Labour Court held that the intention of the First Respondent may be of committing a theft. However, it is only on the ground that the First Respondent was acquitted by the Metropolitan Magistrate that the Labour Court was of the view that the First Respondent should be given the benefit of this circumstance. For the reasons already recorded, this finding is ex-facie perverse. The misconduct was grave and serious. The Labour Court in fact held

that the gravity of the misconduct was a ground for denying back wages. However, the Labour Court lost sight of the fact that once a grave and serious case of misconduct was established and the findings of the disciplinary enquiry were held not to be perverse the interference of the Court was not proper. The jurisdiction of the Labour Court under Section 11A, wide as it is, should not have been exercised for interference in facts such as those in the present case where the allegation of misconduct has been duly established and revealed a serious act of misconduct on the part the workman. The Labour Court has, in my view, transgressed the limits of its jurisdiction and has over reached the order of this Court in arriving at a conclusion at variance with the clear finding of this Court in its judgment dated 23rd February 2005. The submission that this was the first act of misconduct on the part of the workman would not carry the case of the First Respondent any further. Once an act of misconduct is found to be grave and serious that would justify the imposition of the penalty of dismissal. The environs of the airports are sensitive to breaches of security. The consequences of a misconduct by the employee have serious ramifications for the welfare and safety of

passengers and their belongings. Condoning such acts of misconduct would gravely imperil public safety. Courts cannot ignore those consequences. A sense of restraint must be observed before disciplinary penalties are interfered with.

11. In these circumstances, the impugned judgment dated 20th January 2006 is quashed and set aside. Rule is made absolute in terms of prayer clause (A). Reference (IDA) No.198 of 2001 shall accordingly stand disposed of in these terms. There shall be no order as to costs.

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